

Ms. Inga Seifert, Compliance-Officer of the Messe Berlin Group
Messe Berlin GmbH
Messedamm 22
14055 Berlin

cc:

Rain Dr. Anne-Katrin Wolf, Ombudsperson of the Messe Berlin Group
FS-PP Berlin Part mbB
Potsdamer Platz 8
10117 Berlin

September 5, 2019

OPEN LETTER

On the suspicion that your business partner imports from Moroccan-controlled Western Sahara, in breach of the Sahrawi people's right to self-determination

Re: Response to proceeding before the Messe Berlin GmbH Ombudsperson's office

Dear Ms. Seifert and Dr. Wolf,

Thank you for your response to our complaint from February 6, 2019, which brought **serious allegations of fraudulent import and marketing products from Moroccan-controlled Western Sahara by one of your exhibitors, the French company Azura Group**, to your attention. In this open letter, we wish to publicly express our concerns about the implications of your response.

Since the 1970s, the Western Sahara region has been forcibly occupied and controlled by Morocco. While controlling the territory, Morocco has directly and indirectly displaced the Sahrawi people, many of whom now live in refugee camps in Algeria. **Morocco is violating the internationally-recognized right to self-determination of the non-self-governing Sahrawi people.**

Despite UN efforts, there is no end in sight for this unlawful situation – in large part because it continues to be profitable. A number of leading **European supermarkets continue to stock fresh produce, such as tomatoes and melons, grown by Moroccan and foreign businesses in Western Sahara**, on land that has presumably been unlawfully offered to them by the Moroccan authorities. **Doing business in Western Sahara, and using its natural resources and land without the Sahrawi people's express consent, amounts to a serious breach of the**

peremptory norm of **international law on the self-determination of peoples**. The Sahrawi people have not agreed to the economic activities taking place on their territory under Morocco's control, and receive no share of the profits generated by these activities. **Companies doing such business in Western Sahara are thus contributing to and benefitting from the systematic and widespread abuses of the Sahrawi people's human rights.**

Messe Berlin GmbH is arguably "directly linked" with these human rights violations¹ through its relationship with Azura Group, who was an exhibitor at the 2019 Fruit Logistica trade fair. Public information indicates that some of the fresh produce marketed and sold throughout Europe by the French company Azura Group, its subsidiaries and distributors, is grown in Moroccan-controlled Western Sahara.² This produce also seems to be regularly **mislabeled as "made in Morocco"**,³ which has resulted in **European distributors being accused of "fraud"**.⁴

Our organizations addressed Azura Group with these concerns in January 2019. So far, we have not received a response from the company.

If it is confirmed that Azura Group or any other exhibitor, directly or through their subsidiaries, use trade shows organized by Messe Berlin GmbH to promote products from Western Sahara produced through circumstances that perpetuate and contribute to serious violations of international law, **Messe Berlin GmbH would be directly linked to the human rights violations contributed to by its exhibitors.**

In our February complaint, we addressed Messe Berlin GmbH with these concerns, asking that it:

- **Conduct thorough checks with Azura** as to whether it maintains production or packing facilities in Western Sahara,
- **Demand that Azura Group ensure the products** it intends to advertise and market through the Fruit Logistica trade show **do not originate from Western Sahara**, and
- **Issue a public statement that Messe Berlin GmbH does not permit exhibitors that conduct any business operations in Western Sahara to participate in its trade shows**, as doing so is in contravention with applicable international law and businesses' responsibilities under the UN Guiding Principles for Business and Human Rights.

¹ Terminology of the UN Guiding Principles for Business and Human Rights.

² According to the Moroccan news outlet Les Eco, as of October 1, 2018, Maraissa, a subsidiary of Azura Group, was involved in agricultural production in Dakhla, a city in Western Sahara. Les Eco, "Dakhla. La Region Seduit Les Maraichers," <http://www.leseco.ma/regions/70282-dakhla-la-region-seduit-les-maraichers.html> (accessed 29 January 2019).

See also Western Sahara Research Watch, *Label and Liability* (2012), p 10, <http://www.vastsaharaaktionen.se/files/Label%20and%20Liability%20%20WSRW%20June%202012.pdf> (accessed 29 January 2019).

³ In 2013, melons from Western Sahara were reportedly exported to France by Moroccan producers and labeled as coming from "Dakhla, Morocco": <https://www.freshplaza.com/article/106356/France-Azura-set-to-kick-off-melon-season/> (accessed 29 January 2019). In 2012, a Dutch supermarket acknowledged that some of its tomato assortment, including baby-plum and cherry tomatoes, came from Azura's farms in Dakhla, despite their being mislabeled when placed on its shelves: Western Sahara Research Watch, *Label and Liability* (2012), p 12.

⁴ According to an investigation by the group Supermacht.nl, the cherry tomatoes on the shelves of Albert Heijn in February and March 2016 were produced by Azura in Western Sahara: "Ahold accused of fraud with illegal tomatoes from the Sahara," 21 April 2016, <https://www.freshplaza.com/article/156805/Ahold-accused-of-fraud-with-illegal-tomatoes-from-the-Sahara/> (accessed 29 January 2019).

In response to our correspondence, Messe Berlin GmbH denied having any responsibility for vetting exhibitors on such grounds, including the exceptionally serious ones in the case at hand. In view of this, we consider it necessary to publicly raise the following concerns:

1) The scope of applicable laws

Since the UN Guiding Principles on Business and Human Rights (UNGP) were published in 2011, subsequent state and business practices have firmly settled the fact that **businesses have human rights responsibilities under international law**.

The UNGP is clear: Companies' human rights responsibilities are an additional layer of obligations to those found in applicable laws. Thus, a human rights risk and impact assessment would fall short of the UNGP standards if it only looked at violations of applicable laws and not the human rights impacts of its activities and those of its business partners and exhibitors. Where national laws contradict human rights, companies are required to find ways to reconcile their obligations under the host-state's domestic laws and human rights responsibilities; in difficult cases, compliance with human rights should take priority over the need to continue said business dealings.

Messe Berlin, like any other company, must include its own operations as well as those of its business partners in its human rights due diligence. This means that Messe Berlin needs to 1) assess the human rights risks generated by its business partners and exhibitors' activities; 2) act upon those findings; 3) monitor the effects of those actions; and 4) communicate transparently to the wider public about steps 1 to 3.

Under the UNGP framework, **Messe Berlin needs to independently gather and verify facts, and then proceed to apply relevant human rights law to assess whether its business partners and exhibitors are involved in human rights abuses.** Furthermore, Messe Berlin needs to effectively leverage its position vis-à-vis its business partners and exhibitors, and to communicate about these steps publicly, as well as with interested parties.

2) The definition of business partners

Messe Berlin GmbH has chosen not to extend its "Code of Conduct for Business Partners" to the businesses that participate in its trade fairs as exhibitors.

The fact is, however, that businesses that exhibit at Messe Berlin's fairs do enter into a business relationship with Messe Berlin GmbH. **Messe Berlin, therefore, bears responsibility under the UNGP, and should account for its links to exhibitors' activities that potentially affect human rights negatively.** Messe Berlin should do so following the four-step human rights due diligence management process described above.

The human rights risk assessment needs to take into account all available information that would help verify whether a business partner is indeed able to comply with human rights in a specific case. Such assessments are compatible with a policy of neutrality, which Messe Berlin has previously indicated it maintains towards business partners, and are in fact a means for Messe Berlin to comply with its policy, ensuring that it does not unwittingly side with what it deems to be unacceptable business conduct.

Our organizations welcome Messe Berlin's openness to engage us on these issues, and take the opportunity to address this open letter to Messe Berlin in the spirit of transparent and productive dialogue. We ask that you take our concerns into account when acting on your responsibility to

engage in human rights due diligence, and would appreciate your communicating these measures in a timely and public manner.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Müller-Hoff', with a horizontal line extending from the end of the signature.

Claudia Müller-Hoff
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A handwritten signature in blue ink, appearing to read 'Valentina Azarova'.

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